IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.770 OF 2002

Gangadhar Trambak Bhamre.
age 42 years, R/o. Kalwan,
Distk.Nashik. ..Appellant.

V/s.

State of Maharashtra. ..Respondent.
(through PI Kalwan Police Station,
Tal. Kalwan, Dist.Nashik.)

Mr. R.V.Bansode for Appellant.

Mr.K.V.Saste, APP for Respondent-State.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 23, 2006.

ORAL JUDGMENT :

1. This appeal takes exception to the Judgment and Order passed by the First Ad-hoc Additional Session Judge, Nashik dated June 21, 2002 in Sessions Case No.143 of 2001. The Appellant was chargesheeted and tried for offence punishable under section 498(A) as also section 302 of I.P.Code on the allegation that he was responsible to cause death of his wife Kalpana @ Sunanda @ Sunita and for inflicting cruelty on her for not fetching amount as demanded by him, from her father, to enable him to settle debts, which were taken at the time of undertaking construction of his house.

2. The incident in question occurred on the night of 14th July, 2001 at about 9 p.m.. At the relevant time, besides the appellant and his wife Kalpana their daughter Bharati (P.W.3), who is a child witness about 14 years of age, was present in the house. It is alleged that daughter Bharati (P.W.3) rushed to her mother after hearing shouts of her mother and noticed that one kitchen knife was seen inserted in her belly. She attempted to remove the same but could not succeed. According to this witness, the appellant was sitting in another room and later came near Kalpana and helped in taking out the knife. Kalpana succumbed to the injury caused on account of knife blow. The prosecution case is that the said knife blow was inflicted by the appellant. However, the appellant's defence was that deceased Kalpana inflicted that wound herself and attempted to commit suicide, as she was suspecting that the appellant was having illicit relation with their neighbour Sangita who happened to be of the age of their daughter. Police arrived on the scene of offence on the basis of information received. After the police received the information regarding the incident, they gave intimation to the police-patil of village Tamkhed where the father of deceased was

residing. It may be relevant to note here that the parties are closely related to each other. The deceased, who was the wife of the appellant is the daughter of maternal uncle of the appellant. The father of the deceased (P.W.2) accordingly, reached on the scene alongwith other family members and friends. It is his case that on noticing the dead body of deceased Kalpana, he became sick and was required to take medicine. From the prosecution case it is seen that formal First Information Report(FIR) regarding incident came to be registered on the next day with the local police station at the instance of P.W.2-father of the deceased. In the First Information Report(FIR), it is alleged that the appellant had demanded the amount to enable him to complete construction work. That amount was paid to the appellant. However, the appellant demanded further amount which could not be arranged and on that account the appellant out of anger due to some exchange of hot words between the appellant and his wife deceased Kalpana, inflicted knife blow to Kalpana, to which injury she succumbed. On the basis of FIR, investigation commenced. Investigating Officer is stated to have recorded statement of about 20 persons, which formed part of the charge-sheet. Eventually, charge-sheet came to be filed and the

appellant was charged for the offences punishable under section 302 and 498A of I.P.Code and tried for the said offences. The trial Court on the basis of the evidence, accepted the prosecution case that the appellant caused death of Kalpana by inflicting wound by knife blow, which was fatal and Kalpana succumbed to the said injury. The lower Court has also accepted the prosecution version that the appellant committed the said offence as the demand of the appellant to pay further amount was not complied, on account of which there was exchange of hot words between the appellant and his wife Kalpana on the fateful night before the appellant gave the knife blow. The trial Court has also considered the defence case as put to the child witness that there was discordant relation between the appellant and deceased Kalpana on account of the fact that the appellant was having illicit relation with their neighbour Sangita who was of the same age of their daughter. This defence has been rejected by the trial Court. On analysing evidence on record, the trial Court proceeded to record finding of fact that the appellant was responsible for causing murder of deceased Kalpana. The trial Court however, then proceeded to observe that there was no intention of the appellant to cause such death and on that basis

convicted the appellant for the offence punishable under section 304(I). The trial Court has also convicted the appellant for the offence punishable under section 498A of I.P.Code. On this finding, the trial Court, by the impugned Judgment ordered that the appellant shall undergo sentence of rigorous imprisonment for seven years and to pay fine of Rs.500/- i.d. to suffer R.I. for two more months for the offence under section 304(I) and additionally sentenced to suffer R.I. for one year and to pay fine of Rs.500/- i.d. R.I. for two more months for offence under section 498A of I.P.Code. The trial Court has further ordered that both the substantive sentences shall run concurrently. This decision is subject matter of challenge in the present appeal. It is common ground that the State has not challenged the finding of the trial Court holding the appellant guilty for offence under section 304(I), instead of section 302 of I.P.Code. The trial Court has given tangible reasons to take that view. Accordingly, the challenge in this appeal is in relation to the finding of guilt for offences under section 304(I) and 498A of I.P.Code.

3. Counsel for the appellant made fervent effort to persuade this court that finding reached by the

trial Court either in relation to the offence under section 304(I) or for that matter offence under section 498A of I.P.Code cannot be sustained. According to him, finding reached is not consistent with the prosecution evidence, as has come on record. I shall straightway deal with this grievance of the appellant. I have gone through the evidence of the concerned witnesses and on careful analysis of the same I see no reason to take a different view than the one taken by the trial Court. In my opinion, the analysis done by the trial Court of the prosecution evidence and conclusion reached on that basis is a possible view. As it is a possible view, it is not open for this Court to overturn the same merely because on reappreciating the same evidence this court may take a different view. This legal position is well-established by catena of decisions. To elaborate this aspect, I may note that the trial Court has accepted the evidence of P.W.2 who was the father of deceased Kalpana, P.W.6 who was the brother of deceased Kalpana, P.W.4-maternal uncle of deceased Kalpana, as trustworthy to establish the guilt of the appellant-being responsible to cause death of Kalpana, as also regarding demand made by the appellant and inflicting cruelty on deceased Kalpana on account of the fact that his demand was not

fulfilled by Kalpana by getting further sum of Rs.40,000/- from her father. The evidence of these witnesses is consistent in this regard. No attempt has been made during the cross examination to demolish the truthfulness of the version given by the concerned prosecution witnesses, except mere suggestion given that the evidence given by them was false. There is evidence of child witness(P.W.3) examined by the prosecution, which supports the theory put forth by the prosecution that the appellant was responsible to cause death of deceased Kalpana-by establishing the circumstance that he was last seen together and was the only other person available in the house besides their child(P.W.3). The prosecution has also established the nature and cause of injury by producing medical certificate (Exh.20) and post mortem report (Exh.35) and examining Dr.Sonar (P.W.1). The trial Court has considered each of these evidence in detail and accepted the prosecution case. It is relevant to note that the prosecution evidence suggests that attempt on the life of Kalpana was made second time by the accused. On the earlier occasion he had drowsed Kalpana with Kerosine and threatened to kill her. Suffice it to observe that the opinion recorded by the trial Court is a possible view having regard

to the material on record.

4. The Court below has considered several circumstances to reach at the conclusion that the appellant was responsible for giving blow of knife to the deceased Kalpana to which injury the deceased succumbed. The circumstances which were taken into account by the trial Court can be discerned from the discussion in paragraph-37 on wards till paragraph-45 of the impugned Judgment. The trial Court in the first place has considered the aspect of motive of the appellant. The counsel for the appellant however contends that motive is required to be proved beyond reasonable doubt by the prosecution. For establishing motive the prosecution is also obliged to produce evidence regarding preparation made by the accused for the commission of such offence. That no such evidence has come on record. However, in my view, the trial Court has considered the relevant aspects regarding motive in paragraph-37 of the Judgment. It is noted that motive cannot be clinching factor. It has then found that there was allegation of demand made by the appellant and that demand was not complied with by the deceased and her father which was the clear motive behind commission of the offence. Assuming that the reason recorded by

the trial Court while considering the nature of offence-that the appellant had no intention to cause death of Kalpana-would give an impression as being inconsistent with the reasoning in paragraph-37, as is contended. However, that does not affect the prosecution case in any manner. That there was no intention to kill does not mean that no offence had taken place. Besides, it is well established that even if motive is not proved, that cannot be the basis to extricate the accused from the finding of guilt, if there are other strong circumstances and legal evidence produced by the prosecution to indicate complicity of the accused person. In the present case, there is clear evidence on record to indicate the complicity of the appellant in the commission of the offence. Accordingly, the argument of the appellant on the aspect of motive does not commend to me. Suffice it to observe that that cannot be the basis to absolve the appellant from the charge of commission of alleged offence.

5. The trial Court has then adverted to the evidence of Bharati (P.W.3) child witness and other circumstances, as can be noted from the spot panchanama which has been proved, to conclude that, it was obvious that the deceased had collected

wastage or left overs in the kitchen after the dinner and was about to dispose of the same, for which it was necessary to open the door; and probably, before opening the lock of the door, she kept the pot in her hand containing left overs in the kitchen on the gunny cloth, when the incident took place. The trial Court has also adverted to panchanama (Exh.15) as also the photographs (Exh. 45 to 47), which would reveal that the foot wears of male and ladies chappal were found scattered on the spot, which indicates that there was some scuffle. Looking to the situation on the spot, the trial Court has found that it is obvious that in all probability the deceased after opening the door wanted to go out to dispose of the waste or left overs that she had collected in the pot, when the incident took place. The Court below has therefore, inferred that the possibility of Kalpana herself inflicting blow with attempt to commit suicide which is the defence of the appellant is plainly improbable. In other words, it is held that the movements of the deceased preceding the incident, rules out the possibility of suicide.

6. The trial Court has then noted that there was uncontradicted evidence of child witness Bharati that no sooner she heard the shouts of her mother, she

came out and found knife embedded in the wound that was found in the stomach just below the chest. The trial Court also adverted to the subsequent conduct of the appellant accused to draw inference against the appellant. The trial Court has also noted that no suggestion has been given to the prosecution witness in particular Bharati (P.W.3) about subsequent conduct of the accused. She has specifically stated that her father was in the adjoining room and he came inside later and after she had reached near her mother. It is also noted by the trial Court that injured Kalpana was taken to the hospital by Dilip Pagare who is the son of appellant's sister and not by the appellant himself. Indeed, the case of the appellant that he was accompanying him has also been considered by the trial Court and answered against the appellant on the finding that if the accused was accompanying injured Kalpana to the hospital, in that case he would have been required to complete the formalities of admission of his wife in the hospital and not Dilip Pagare.

7. The trial Court has also adverted to the evidence of other prosecution witnesses including the seizure of the bloodstained clothes from the person

of the appellant. There is no challenge to the evidence of (P.W.7) Investigating Officer in this regard. The appellant has not cross-examined the said witness at all. The trial Court had also found with reference to the exposition in Modi in Medical Jurisprudence 22nd edition that this was another circumstance to accept the prosecution case and reject the defence theory. In that, no blood marks were found on the hands of the deceased and the weapon was not in the grip of the deceased. Similarly, the type of injury caused was very difficult in the case of suicide. Taking over all view of the matter, the trial Court proceeded to hold that the prosecution has clearly established from the evidence that the death of Kalpana was homicidal death and further that the death was caused on account of knife blow inflicted in the vital part of the body of Kalpana, to which injury Kalpana succumbed. The finding so reached by the trial Court on analysing the evidence on record in my opinion is a possible view. Once this conclusion is reached, this court will be slow in interfering with the appeal against conviction at the instance of the appellant.

8. To get over this position counsel for the

appellant would contend that there is unexplained delay of one day in registering FIR. According to him, inspite of opportunity available to P.W.2 to lodge complaint immediately on reaching the spot, he did not take any steps in that behalf but the FIR has been registered only on the next day. According to the appellant, therefore, it is a case of false complaint registered against the appellant after deliberation. Even this grievance has been considered by the trial Court in paragraph-29 of the impugned Judgment. The trial Court has noted that family of the accused and family of the complainant party are closely related. In such situation, it is natural that the father of the deceased will not rush to the police station immediately. Besides, it is noticed that the complainant was under shock. It has come in evidence that he became severally uncomfortable and was required to take medicine. The fact that the complainant on seeing dead body of Kalpana has become severely uncomfortable is not only spoken by P.W.2 himself but also by his son P.W.6. There is no serious challenge to the said version except suggestions put to these witnesses that they were not in position to indicate the name of the doctor who prescribed medicine and the name of the medicine and other details. However, in my opinion,

the view taken by the trial Court with regard to the grievance of the appellant that the prosecution should fail on account of unexplained delay in lodging FIR, is a possible view and needs no interference.

9. It was then contended on behalf of the appellant that the finding reached by the Court below that there was no legal evidence with regard to the fact that death of Kalpana was homicidal death. For this purpose reliance is placed on medical report (Exh.20) and deposition of Dr.Sonar (P.W.1). In the medical report, it is stated that external injuries found on the person of Kalpana was of epigastric wounds just below chest, 2.25 cm. in horizontal and 0.5 cm vertical depth upto the heart. Reliance is placed on Exh.20 at page-59, which is the medical certificate issued by Dr. Sonar dated 15th July, 2001. He has mentioned the cause of death as cardiac arrest due to cardiac puncture on account of the wound. Indeed, in this report it is not specifically mentioned that the death was homicidal or suicidal death. Reference is then made to the evidence of the P.W.1-Dr.Sonar. In the cross-examination he has deposed about external injuries noticed on the body of Kalpana. It was noted that she had received

epigastric wounds just below chest, 2.25 cm. in horizontal and 0.5 cm. vertical depth upto the heart. It was obliquely upwards just below the rib cage pericardium filled with blood and brown and there was also haematoma alongwith present. The Doctor has also deposed that it was antimortem injury caused by edged weapon and was sufficient in the ordinary course of nature to cause death. The doctor has also deposed about the corresponding injuries of internal puncture at right vertical filed with blood rest of the organs were pale. He has then opined that the patient died of shock due to cardio arrest with hemourrahigic shock due to puncture of right verticles, which fact is noted in the post mortem report. He also deposed that the injury found on the person of deceased both internal or external could be caused by the knife Article-1 which was shown to him. In the cross-examination he has stated that it is true that injuries which were tapering upwards to the right vertical to the heart. He has then stated that such type of injury could be caused in case of suicidal death or self injury. He has however, explained that he did not mean that it was impossible to cause said injury by self "but was very rare". It is on the basis of this evidence it was contended that there was absolutely no legal evidence to hold

that death of Kalpana was on account of injury caused to her which can be described homicidal death. The argument seems to be attractive, but cannot be countenanced. This is so because, the medical certificate (Exh.20) as well as post mortem report (Exh.34) and the evidence of Dr. Sonar (P.W.1) if considered together cannot persuade this court to accept the theory of probability of cause of death being attempt to commit suicide. The trial court has rightly adverted to the exposition in Modi in Medical Jurisprudence and noted that the circumstances to hold that the injury was not a self inflicted wound. That there was no blood marks on the hands of the deceased. Weapon in question was not embeded in manner which ordinarily is noticed in case of self inflicted wound. Besides, the wound caused is just below the chest, 2.25cm. in horizontal and 0.5 cm. vertical depth upto the heart. The Doctor has deposed that such injury is very rare in case of self inflicted wound. That does not mean that defence has succeeded in inspiring confidence of the court to accept the theory of suicide on theory of preponderance of probabilities. The trial Court has justly adverted to several circumstances which were clinching to hold against the appellant that the circumstances left no manner of doubt that it was a

case of assault on Kalpana by knife and not a case of suicide. I have already referred to these circumstances in the earlier part of the Judgment. It is only if those circumstances were absent, argument advanced before this court that there is no legal evidence on record for recording homicidal death, could have merited consideration.

10. The counsel for the appellant lastly submitted that there is no eye-witness examined by the prosecution. Even this grievance is of no substance. It is not the prosecution case that incident in question was witnessed by any other person. Prosecution case is very specific, namely, that the appellant and his wife Kalpana alone were in the house alongwith their daughter Bharati at the relevant time. There was no other person in the house. Bharati was in another room at the relevant time. From the evidence of Bharati it is clear that she was sleeping at the relevant time and reached near her mother after hearing shouts of her mother. In the circumstances, absence of eye-witness in no manner will make any difference to the prosecution case. Having regard to the fact situation of the present case and for the nature of evidence which has already come on record, in my opinion, there is no

infirmity either in the approach or the conclusion reached by the trial Court with regard to the findings on the relevant issues to conclude that the appellant was guilty of the offence punishable under section 304(I) and 498A of the I.P.Code. There is sufficient evidence on record to support that position. The view taken by the trial Court as mentioned earlier being possible view it will not be appropriate for this court to reverse the same.

11. That takes me to the last contention of the appellant. According to the learned counsel for the appellant, lenient view be taken with regard to the quantum of sentence. It is submitted that the appellant is in jail since 15th July, 2001. He has already undergone substantial part of his sentence and is likely to be released in December, 2006 having earned remission of sentence. Besides, contends learned Counsel for the appellant, appellant was in the employment of MSEB and has already lost his job on account of his conviction. Moreover, the appellant has the responsibility of bringing up his four children. In the first place, it must be mentioned that the trial Court has already taken a lenient view of the matter by imposing sentence of only seven years for offence punishable under section

304(I). In so far as sentence with regard to the offence punishable under section 498A of I.P.Code is concerned, the appellant has already suffered the same as it was only for one year. Accordingly, the appellant has to undergo the remaining sentence with regard to the offence punishable under section 304(I) and as submitted before this court, the appellant is likely to be released sometime in December, 2006 having earned remission; coupled with the circumstances pressed into service on behalf of the appellant that the appellant is alleged to have inflicted only one blow as a sequal to the hot exchange of words that preceded and that has already lost his job and that he will have to look after his four children, interest of justice will be met if the quantum of sentence is reduced. I am inclined to accept the request of the appellant that the quantum of sentence be reduced to already undergone in the peculiar fact situation of the present case, as in effect the sentence will stand reduced only about four months.

12. Accordingly, this appeal partly succeeds only to the extent of quantum of sentence imposed by the lower Court by reducing the sentence to the period of sentence already undergone by the appellant.

13. The appellant be set at liberty forthwith unless required for some other offence. Ordered accordingly.